

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN FRANCISCO OCHOA,

Defendant and Appellant.

E070319

(Super.Ct.No. INF1700628)

OPINION

APPEAL from the Superior Court of Riverside County. James S. Hawkins, Judge.
(Retired Judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to
art. VI, § 6 of the Cal. Const.) Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Juan Francisco Ochoa was charged by second amended information with attempted murder (Pen. Code,¹ §§ 664/287, subd. (a), count 1), assault with a deadly weapon (§ 245, subd. (a)(1), count 2), and misdemeanor battery (§ 242, count 3). As to counts 1 and 2, the amended information alleged that he personally inflicted great bodily injury. (§§ 12022.7, subd. (a) and 1192.7, subd. (c)(8).) It further alleged that defendant had one prior serious felony conviction, within the meaning of section 667, subdivision (a), and sections 667, subdivisions (c) and (e)(1) and 1170.12, subdivision (c)(1). A jury found defendant guilty of counts 2 and 3, but not guilty of count 1. The jury also found the great bodily injury enhancement on count 2 to be not true. Defendant admitted the prior conviction allegations. Prior to sentencing, a trial court granted defendant's motion to dismiss the prior strike conviction, pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

Defendant filed a timely notice of appeal. We affirm.

FACTUAL BACKGROUND

Defendant was employed as a handyman by his nephew (the victim), who owned a Spanish newspaper. One day, defendant was at work and started cussing out loud. The victim tried to calm him down, but defendant told him to shut up and leave him alone. Defendant threw all his tools on the ground, jumped in his car, and "peeled out." He did not show up to work the rest of the week, so the victim assumed he did not want to work

¹ All further statutory references will be to the Penal Code, unless otherwise noted.

there any longer. The victim went to defendant's house the following weekend to return the tools.

The next day, defendant drove to the victim's office. Defendant said some of his tools were missing, and the victim needed to pay him for them. He looked for them in the office and started cussing at the victim when he could not find them. Defendant then asked the victim where his paycheck was. The victim handed him a check. Defendant reached for the check and then punched the victim on the forehead. The victim pushed defendant out of the office, and defendant continued punching him. Defendant threatened to "get [him]" and break the windows on his car and front office. He went to his van and pulled out a sledge hammer or a pick axe.² Defendant was enraged at that point and walked toward the victim and started to swing the tool like a baseball bat. The victim "rushed him" to try and avoid the swinging motion. However, defendant looked right at him and swung the tool. It hit the victim the on top of his head, and "a burst of blood came out."

The victim put his arms around defendant and tackled him. They both fell to the ground. The victim got defendant in a headlock, but released him. Defendant said it was not over, started yelling, and took off in his van.

A short time later, the police responded. The victim participated in an in-field identification and then went to urgent care. He received seven stitches in his head.

² At trial, the victim said he was not sure what the tool was called.

Defendant testified on his own behalf at trial and said he was angry with the victim and got a pick axe. He said he threatened to do something to the victim's car, but would never swing the pick axe at him.

ANALYSIS

After the notice of appeal was filed, this court appointed counsel to represent defendant. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, and identifying no potential arguable issues.

Defendant was offered an opportunity to file a personal supplemental brief, which he has not done.

Under *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
J.

We concur:

RAMIREZ
P. J.

SLOUGH
J.